Your rights and responsibilities under

ONTARIO'S LABOUR RELATIONS ACT

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Ontario. Labour Rel. Act.

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A fact book for **employees**

Ontario
Ministry of Labour

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IMPORTANT:

This booklet explains only the main points of the Ontario *Labour Relations Act.* It cannot cover every topic in detail. You must *not* make an important decision that may affect your job, your employer or your union based only on what you read here. If you are at all unsure of your rights and responsibilities, you should talk to your union or get legal advice.

Introduction

The *Labour Relations Act* (LRA) sets out the rights and responsibilities of employers, employees and unions in the following matters:

- starting and joining unions
- collective bargaining and collective agreements
- unfair labour practices
- strikes and lockouts
- resolving disputes

Whether or not you now belong to a union, you should understand how this law may apply to you and your workplace. This booklet will tell you, in plain language, what every employee who is covered by the LRA should know. More information is available, if you need it.

This law has been updated for the first time in over 15 years to keep pace with Ontario's changing economy and workforce. As we approach the 21st century, Ontario's employees and employers must, more than ever before, discover new ways of working together to keep our industries strong and competitive. No law by itself can achieve this; only people can. But by setting out a common framework for workplace relationships, the *Labour Relations Act* will help us all devote more of our time and efforts to our common goal: making Ontario a better, more prosperous, place in which to live and work.

The Purpose of the Labour Relations Act

The *Labour Relations Act* (LRA) sets out the purpose of the law. This is:

- To ensure that employees can freely join the union of their choice
- To enhance the ability of employees to negotiate their pay, their benefits and their working conditions
- To encourage co-operation between unions and employers in order to improve productivity and training
- To increase employee participation in the workplace
- To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and unions
- To provide fast and fair methods of resolving disputes

To help achieve this purpose, the LRA contains rules and procedures that the workplace parties - employers, unions and employees - must follow. The purpose of the LRA guides the interpretation of these rules and procedures.

The Ontario Labour Relations Board

The *Ontario Labour Relations Board* (OLRB) is a neutral tribunal with the responsibility to interpret the LRA. If the workplace parties have a disagreement about any of the rules and procedures in the LRA and how they apply to any situation, the OLRB can be called on to make a decision.

Any employee, union or employer can complain to the OLRB if they feel their rights under the LRA have been violated. The OLRB will consider the positions taken by all sides and make a decision about how the law applies to the complaint. It can also make an order that affects any workplace party in order to ensure that the LRA is upheld.

The Right to Join a Union

Every employee in Ontario has the right to join and support the union of his or her choice. Your employer cannot interfere with your decision in any way. Neither can a union. During an organizing drive, your decision to join a union or not must be voluntary in every way.

Once a union is in place, your employer and union can agree that everyone who is covered by a collective agreement must be a union member. Employees who have a genuine religious objection to membership in a union may apply to the OLRB for exemption from such an agreement.

Every union member also has the right to participate in any lawful union activity or to act as a union official. Every union has a legal duty to represent every individual union member in a non-discriminatory way.

Your employer also has the right to join an employer's association, which can represent him or her in all labour relations matters.

Some Employees Are Not Covered by the LRA

The LRA does not cover police, firefighters, most teachers and provincial government employees. These employees are covered under other Ontario labour laws. Employees of the Government of Canada and businesses that are regulated by the federal government are also not covered by the LRA. They are subject to federal laws.

A bargaining unit cannot include managers or employees who work with confidential labour relations information.

Organizing and Certification

How a Union Receives the Right to Represent a Group of Employees

Most employees join a union by starting a job where there is already a union in place. However, if they do not have a union, they can choose to join one.

During an *organizing drive* a union approaches the employees it wishes to represent and asks for their support. As well, one or more employees may themselves approach a union and ask it to begin an organizing drive. In either case, if you decide to join a union during an organizing drive, you will normally sign a membership card to register your support. The LRA does not require any payment or fee to join a union.

The *bargaining unit* is the group of employees that the union represents, or wants to represent. The employer and the union can agree on who is in the bargaining unit. In some cases, the OLRB will decide which employees are in the unit.

A union that applies to the OLRB to be *certified* as the representative of a bargaining unit must prove that a majority of the employees in that unit support it. This can be done in one of two ways:

1. the union shows, through signed membership cards, that at least 55% of the employees in the unit support it; or

2. if a union can show that at least 40% (but fewer than 55%) of the employees in the unit have signed membership cards, it can ask the OLRB to hold a secret ballot vote. The union will be certified if more than 50% of those voting support it.

In some cases, the OLRB can certify a union if it decides that the true wishes of the employees in a bargaining unit cannot be known because their employer has interfered with the organizing drive in a way that violates the LRA.

In most cases, both full-time and part-time employees will be in the same bargaining unit if the union has overall majority support.

Employees who do not wish to be represented by the organizing union may sign a letter or a petition to the OLRB stating this. However, such a letter or petition will not be considered by the OLRB if it is submitted after the union has applied for certification. Neither will the OLRB consider union membership cards that are submitted after this date.

Consolidated Bargaining Units

The LRA allows bargaining units from different locations of the same employer to be combined by OLRB. This can only happen if the same union represents (or is applying to represent) these different units. A number of criteria must be considered by the Board in deciding whether consolidation is appropriate.

Full-time and Part-time Employees

During an organizing drive in a workplace with no union representation, the LRA requires unions to seek support from both full-time and part-time employees. If the OLRB finds that the union does not have sufficient support among this combined group it may nonetheless certify the union to represent either the full-time or part-time employees separately, if it can show sufficient support among one or the other group.

Complaints About Discharge or Discipline Because of Union Support

Your employer is not allowed to interfere with a lawful union organizing drive. Among other things, this means that it is illegal to penalize you (or threaten to penalize you) in any way because of your decision to support a union.

If you believe that you were illegally disciplined or discharged during an organizing drive, you can complain to the OLRB. The organizing union can represent you, even if it has not yet been granted bargaining rights in your workplace. If that union requests, the OLRB must hold a hearing on your complaint within 15 days and must give its decision within two working days after the hearing is over.

Even though employers are not allowed to interfere with a union organizing drive, they still have the right to conduct business in the normal way. For this reason, your employer has the right to forbid any organizing activity on his or her property and may still penalize you during an organizing drive for causes unrelated to your right to support a union.

Although your employer is free to express views about organizing a union, those views cannot include promises, threats, intimidation, or undue influence related to your decision about a union.

In order to maintain its impartiality, the OLRB will not give advice on, or answer questions about, the application of the law. If you have any questions about how the LRA may affect you, you are encouraged to seek legal advice.

Organizing Activity in Shopping Malls

If your workplace is located within private property that is normally open to the public, such as a shopping mall, special rules apply to organizing drives. The union can conduct organizing activity *near* the entrance and exit *and* outside the workplace being organized, even where this is inside the mall property. This activity must not unduly disrupt the operation of your workplace or any other part of the mall.

This same rule applies to picketing during a legal strike or lockout.

Collective Agreements and Collective Bargaining

The *collective agreement* (often called a *contract*) is the agreement made between your employer and your union about the wages, benefits and working conditions of the employees in your bargaining unit. Usually, your union sends a written notice to your employer that it wants to begin bargaining. This bargaining is often called negotiating. Both sides then meet to negotiate the terms of the collective agreement, including how long it will last. Most collective agreements last for two or three years, but every agreement must last for at least one year.

While the agreement is in force, there can be no strike or lockout.

The LRA requires your employer and union to make every reasonable attempt to reach a collective agreement. This is called *bargaining in good faith*.

(Note: The OLRB can settle any part of a collective agreement if either the union or the employer is not bargaining in good faith and there is no other way to adequately remedy the effects of that failure to bargain in good faith. This applies to any collective agreement, including the first.)

First Agreement Arbitration

First agreement arbitration under the LRA applies only where there has never been a collective agreement between the union and the employer covering the bargaining unit.

Either the union or the employer can request the Minister of Labour to permit their first collective agreement to be settled by arbitration. However, this request cannot be made until 30 days after a legal strike or lockout is possible under the LRA. A three-person arbitration board will hear from both your employer and your union before it decides on your first collective agreement. The board's decision must be made within 45 days after the hearing begins.

Once the request for first agreement arbitration is made, there can be no strike or lockout. If there is an ongoing strike or lockout at the time of the request, it must stop.

Minimum Requirements for All Collective Agreements

Under the LRA, every collective agreement must contain the following important provisions:

1. **A Grievance/Arbitration Process**

   If there is a dispute about the meaning or application of a collective agreement, it must be resolved in an orderly way. This is often called the *grievance procedure*.

The LRA sets out several rules for the grievance/arbitration process. Most of these rules are designed to speed up that process so that disputes about the collective agreement can be handled both fairly and quickly.

If you feel that there has been a violation of your collective agreement, you should consult your union for advice and assistance.

2. 'Just Cause'

From the time a union is certified or voluntarily recognized as the bargaining agent, every employee in the unit is protected against discharge or discipline unless it is for just cause. Every collective agreement must provide such protection. That protection continues after the expiry of the contract until a new contract is signed - even during a legal strike or lockout. The employee's case for reinstatement or removal of disciplinary penalty is heard by an arbitrator or the OLRB.

3. Workplace Consultation

A consultation provision in a collective agreement requires your union and your employer to meet regularly to discuss workplace and employee issues. If either of them makes a written request for a consultation provision before or during collective bargaining, the resulting agreement must contain one.

Strikes and Lockouts

A legal work stoppage (strike or lockout) can only take place *after* the collective agreement has expired *and* the conciliation process under the LRA has been completed.

During a work stoppage, both you and your employer still have rights and responsibilities. Here are the main ones:

- **Picketing**

  The LRA governs picketing that takes place on private property that is normally open to the public (such as a shopping mall.) Picketing within a shopping mall may only happen *near* the entrance and exit *and* outside the affected workplace. Your employer (or any other party affected by the picketing) can apply to the OLRB to limit picketing activity that is unduly disruptive.

- **Employee Benefits**

  Your regular benefits (health and welfare, dental, life insurance, etc.) must be maintained during a work stoppage if your union pays their cost. There is one exception: your employer may choose not to allow contributions to your pension plan during a work stoppage.

Discharge or Discipline for Cause Only

Even though the collective agreement has expired during a strike or lockout, the clause in the agreement that prohibits discipline or discharge except for just cause remains in force. Any disciplinary action of your employer towards bargaining unit employees during a legal work stoppage may be subject to the grievance/arbitration process.

Continuation of Business

During a work stoppage your employer still has the right to carry on business. However, there are some restrictions to that right if at least 60% of the employees who voted by secret ballot supported the strike, or in the case of a lockout. These include:

1. Your employer cannot use the services of any employee from the bargaining unit (see "Organizing and Certification") that is on strike or is locked out.

2. The employer cannot hire new employees or volunteers to perform the work normally done by the bargaining unit employees. However, existing non-bargaining unit employees who work at the location of a work stoppage may do bargaining unit work in that location only. So can management staff, who can also be moved between locations within a bargaining unit in order to work during a strike or lockout.

3. Non-bargaining unit employees can legally refuse to perform bargaining unit work during a strike or lockout. Under the LRA employers may not penalize such employees or managers for such a refusal.

- **Essential Services**

  Replacement workers may be used during a strike or lockout in order to maintain important health, social or community services, and the environment. They may also be used to prevent serious damage or breakdown to property or equipment or in an emergency. Except in the case of an emergency, the employer must:

  1. discuss the use of such replacement workers with the union before the work stoppage begins and

  2. first allow bargaining unit members the opportunity to perform this work.

The OLRB has developed expedited procedures to ensure speedy resolution of disputes on these issues.

- **Contracting Out or Transferring Work**

  The work normally performed by bargaining unit employees may, with certain limitations, be contracted out or transferred to another workplace of the employer that is not involved in the dispute.

Returning to Work After a Strike or Lockout

Your employer and union can agree on a return-to-work plan following a work stoppage. However, if they cannot agree on such a plan, bargaining unit employees must be returned to their old jobs by seniority. Exceptions to the seniority rule can be made during a start-up period if a senior employee cannot perform the start-up work.

When a Business Is Sold or Work Is Transferred

Existing union bargaining rights are not lost when a business is sold or when building services are transferred to a new contractor. The new employer (often called the *successor employer*) takes the place of the previous employer in labour relations matters covered by the LRA. This means that, in most cases, every LRA and collective agreement obligation of the previous employer automatically becomes the obligation of the new employer.

Building Services

If you work in building services (such as cleaning, food services or security), and you are represented by a union, a change in your employer will *not* affect the right of the union to represent you. Nor will it change any collective agreement that is still in force. If there is a change in your employer during a union organizing drive, the drive can continue. Your new employer has all of the LRA obligations of your previous employer.

(Note: The Employment Standards Act contains some rules that apply in these cases. Information can be obtained from the Employment Standards Office of the Ministry of Labour.)

Adjusting to Change in the Workplace

If bargaining unit employees are going to lose their jobs because the business (or part of it) is being permanently shut down, the employer must inform the union of this. The same rule applies in the case of a mass layoff (50 or more employees), even if no part of the business is being shut down permanently.

The union can then request to meet with the employer in order to negotiate an adjustment plan. The purpose of this process is to have both the employer and the union work together to develop assistance for those employees who are going to lose their jobs. The employer must meet with the union within seven days, and both parties must negotiate in good faith towards reaching an adjustment plan and, if the union suggests, to discuss alternatives to the job losses. If such a plan has been negotiated, it is enforceable through a grievance/arbitration process.

The adjustment plan can include any matters that the union and employer agree on. The LRA suggests several areas of concern that may be included in a plan, such as: employee counselling and retraining, human resource planning, early retirement and other employment options.

(Note: The Employment Standards Act sets out the rules concerning notice of layoff, termination pay and severance pay. You can obtain information on these topics from any office of the Ministry of Labour.)

Special Provisions for the Construction Industry

The construction industry is different from other industries because each employee normally works for several different employers during a year. For this reason, the *Labour Relations Act* contains special rules that apply only to this industry. These rules affect how the union is certified and how it bargains with employers.

If your work or business involves construction, and if you have questions concerning your rights or obligations under the LRA, you should contact your union or a legal adviser.

For More Information

A copy of the *Labour Relations Act* and related publications can be obtained from:

Publications Ontario
880 Bay St.
Toronto, Ontario
M7A 1N8
326-5300 (in Toronto)
1-800-668-9938 (outside Toronto)
1-800-267-6511 (for TTD service)

You can obtain printed information on OLRB rules and procedures and the necessary forms for making applications under the LRA from:

Ontario Labour Relations Board
4th Floor
400 University Ave.
Toronto, Ontario
M7A 1V4

Additional copies of this booklet may be obtained from the Ministry of Labour. Check the Ontario Government blue pages in your telephone book for the office nearest you.

For information or more copies of this pamphlet, call (416) 326-9851

ISBN 0-7778-0908-7 15M/2/93